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W. Murray Spruill

Message:Re: Carozzi *et al.*

Appl. No. 10/783,417; Filed February 29, 2004

Attorney's Docket No. 045600/274146

Title: AXMI-006, A DELTA-ENDOTOXIN GENE AND
METHODS FOR ITS USE

Documents attached: Response to Restriction Requirement (2 pages)

Number of Pages: (including cover page) **3****IF NOT RECEIVED PROPERLY, PLEASE NOTIFY US IMMEDIATELY AT.**

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NOV 17 2005

Attorney's Docket No. 045600/274146

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Carozzi <i>et al.</i>	Confirmation No.:	6391
Appl No.:	10/783,417	Group Art Unit:	1638
Filed:	February 29, 2004	Examiner:	Anne R. Kubelik
For:	AXM1-006, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE		

November 17, 2005

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Office Action dated October 17, 2005, in which the Examiner has required restriction between Group I, namely Claims 1-11, 19 and 22-23, drawn to a nucleic acid, vectors, host cells, plant cells, plants and seeds comprising it, and a method of using it to produce a protein; Group II, namely Claims 12-13, 15-18, and 20-21, drawn to a protein, compositions comprising it, and a method of using it to kill a pest; and Group III, namely Claim 14, drawn to an antibody. Applicant hereby provisionally elects with traverse to prosecute the claims of Group I (Claims 1-11, 19 and 22-23) and expressly reserves the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims.

Group I is drawn to an isolated nucleic acid molecule. It is submitted that a search of the nucleotide sequence of this nucleic acid molecule will reveal information relevant to the polypeptide sequence. As the Examiner is aware, the DNA and amino acid sequences are related. If one knows the DNA sequence, one can readily determine the amino acid sequence of the polypeptide. Thus, Groups I (Claims 1-11, 19 and 22-23) and II (claims 12-13, 15-18, and 20-21) should be considered together. MPEP 803 sets forth that "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Applicants submit that the consideration of Groups I and II together will not be a burden on the Examiner. The issues surrounding the nucleic acid molecule and the polypeptide claims are essentially the same and thus

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should be considered together. In fact, these groups are sometimes considered together by other examiners, indicating that it is not a serious burden on the Examiner to search and examine the two groups together.

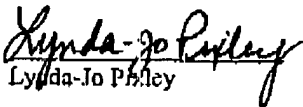
For these reasons, it is requested that the Examiner reconsider and examine Groups I and II together. Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those, which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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Registration No. 32,943

CUSTOMER NO. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260	<p>I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at facsimile number 571-273-8300 on the date shown below.</p> <p> Lynda-Jo Phley</p> <p><u>November 17, 2005</u> Date</p>
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